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SKI, LLC, and H2O SPORTS, HAWAII, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ROCHELLE NICOLE RODRIGUEZ,
individually, and as Personal Representative of
the Estate of JAMAL MARQUEZ JORDAN,
Deceased,

Plaintiff,

VS.

SEABREEZE JETLEV LLC, SEABREEZE JET SKI, LLC, and H2O SPORTS HAWAII, LLC.

Defendants.

Case No. 4:20-cv-07073-YGR
(Consolidated with No. 4:21-cv-01527-YGR)

JOINT CASE MANAGEMENT STATEMENT

Date: December 13, 2021
Time: 4:00 pm
Judge: Hon. Yvonne Gonzalez Rogers
Ctrm: 1, Fourth Floor

Complaint Filed: October 9, 2020
Trial Date: June 13, 2022

The parties herewith respectfully submit the following Joint Case Management Statement in accordance with the Court's December 3, 2021 Order Denying without Prejudice Defendant's Motion for Good-Faith Settlement Determination. *ECF No. 61.*

PLAINTIFF'S POSITION

These proceedings arise in admiralty ECF No. 4 at ¶ 1, and spring from JAMAL JORDAN’s (“DECEDENT’s”) October 22, 2019 death on Moanalua Bay, Oahu. *Id.* at ¶¶ 8-11. Settlement negotiations began on September 29, 2021, when “the duly appointed personal representative of DECEDENT’s Estate,” Plaintiff ROCHELLE RODRIGUEZ, *id.* at ¶ 2, offered to dismiss this action and “***all claims brought or which could have been brought therein*** against Defendants” for the full, “per-occurrence, indemnity limit of Admiral Insurance Company (“Admiral”) Policy No. CA000019627-06.” ECF No. 57-1 at 4 (emphasis added). Defendants admit that the Admiral Policy comprises their only available coverage, see ECF No. 52-1 at 8:6-7, but have thus far refused to accept Plaintiff’s policy-limits demand unless this Court:

1. approves the settlement “as being in good faith,” *id.* at 53, ***and***;
 2. appoints a guardian *ad litem* under Fed.R.Civ.P. 17(c) to represent DECEDEDENT’s 17-year-old daughter, S.J., in the negotiations. *ECF No. 52-1* at 9:25-10:5.

The first condition is needless. See e.g. *McDermott, Inc. v. AmClyde*, 511 U.S. 202, 210 (1994), *Slaven v. BP America, Inc.*, 958 F.Supp. 1472, 1478 (C.D.Cal 1997), *Hutchins v. Juneau Tanker Corp.*, (1994) 28 Cal.App.4th 493, 498-499. But it is more or less harmless, so Plaintiff has not objected to it. ECF No. 57 at 2:5-6. The second condition, however, is a deal breaker; it implies that S.J. has a non-existent claim and threatens to delay the proceedings, saddle the case with an unwarranted intervenor, and preclude a settlement.

Rule 17(c) was promulgated “to protect a minor or incompetent person who is unrepresented in an action.” That Rule does not apply to S.J. Plaintiff’s counsel has advised S.J.’s mother, Tracy Maldonado, of the December 13th Status Conference and Ms. Maldonado and her daughter have agreed to appear. Plaintiff RODRIGUEZ will also be in attendance. (We have likewise given Ms. Maldonado the contact information for the Court’s Pro Bono Program.) Both

1 Plaintiff and Ms. Maldonado will confirm that S.J. was in California and nowhere near Moanalua
 2 Bay on the day her father died. Alternatively, Plaintiff will file an administrative motion in
 3 advance of the Conference requesting leave to submit a sworn declaration establishing those
 4 points. The undisputed facts will thus show that S.J. has **no** cause of action for bystander distress.
 5 See *Stacy v. Danielsen*, 609 F.3d 1033, 1035 (9th Cir. 2010) (“those within the zone of danger of
 6 physical impact can recover for fright, and those outside of it cannot”) (quoting *Norfolk & W. Ry.
 7 Co. v. Ayers*, 538 U.S. 135, 146 (2003)). She can sue Defendants **only** for wrongful death. See
 8 e.g. *Calhoun v. Yamaha Motor Corp., U.S.A.*, 216 F.3d 338, 350 (3rd Cir. 2000). Defendants
 9 suggest that the Supreme Court’s decision in *Yamaha Motor Corp. v. Calhoun*, 516 U.S. 199
 10 (1996), gives S.J. an opportunity to bring an as yet unidentified claim against them under the state
 11 law of Hawai’i, but that decision adds nothing to the present inquiry and holds only that state
 12 remedies can be asserted in a “federal maritime **wrongful-death action**” brought by a nonseafarer
 13 killed on territorial waters, so long as those remedies do not conflict with federal maritime law.
 14 515 U.S. at 201 (emphasis added). It is apodictic under federal maritime law that:

15 There is only a single claim arising from [a maritime decedent’s] death, and it
 16 belongs to the personal representative of his estate. The beneficiaries of the estate,
 17 including the minor children, are not authorized to bring independent suits for their
 individual damages; rather, they must share in the single judgment, if any, obtained
 by the personal representative.

18 *Beiswenger Enterprises Corp. v. Carletta*, 86 F.3d 1032, 1041 (11th Cir. 1996); see also *Ivy v.
 19 Security Barge Lines, Inc.*, 585 F.2d 732, 734 (5th Cir. 1978); *Beck v. Alaska Air Group*, 2002
 20 U.S. Dist. LEXIS, *5 (N.D.Cal. 2002) (citing *Beiswenger*, *supra*). The personal representative, in
 21 turn, “holds any recovery in trust” for the decedent’s other beneficiaries. *Calton v. Zapata
 Lexington*, 811 F.2d 919, 922 (5th Cir. 1987) (compiling cases). It follows perforce that the other
 23 beneficiaries have no standing to sue for wrongful-death or survival damages and must assert their
 24 rights through the personal representative. *Id.*; see also *In re Sea Star*, 2017 U.S. Dist. LEXIS
 25 128523 (M.D.Fla. Jan. 26, 2017) *56 (“it is well settled that only the personal representative, and
 26 not the beneficiary, has standing to sue” for wrongful death under maritime law) (citing cases);
 27 “*In re Osage Marine Services*, 2016 U.S. Dist. LEXIS 5086 (E.D.Mo. Jan. 15, 2016), *7, n3 (“It

1 is well settled under general maritime law that only the personal representative of the estate may
 2 bring a claim"); *Neal v. Barisich, inc.*, 707 F.Supp. 862, 864 (E.D.La. 1989) ("Under both the
 3 Jones Act and the general maritime law only the personal representative of the decedent's estate
 4 has standing to initiate suit for any survival damages (which inure to the decedent's estate and
 5 ultimately to the estate's beneficiaries) and for any wrongful death damages (which inure directly
 6 to the decedent's survivors").

7 In a narrow exception to that rule, some circuits have held that a "beneficiary of a wrongful
 8 death claim may be permitted to intervene in a suit if he [or she] can establish that his [or her]
 9 interests are at odds with the decedent's personal representative." *Alcabassa v. Korean Airlines*,
 10 62 F.3d 404, 408 (D.C.Cir. 1995) (DOHSA case); see also *Smith v. Clark Sherwood Oil Field*
 11 Contractors, 457 F.2d 1339, 1345 (5th Cir. 1972) cert. denied, 409 U.S. 980 (1972) (Jones Act
 12 case); *Calton*, 811 F.2d at 921-922 (Jones Act case); *Ivy*, 585 F.2d at 734 (general maritime case);
 13 *Neal*, 707 F. Supp. at 864 n. 1 (Jones Act and general maritime case). But the Ninth Circuit has
 14 never recognized that exception. See *Kole v. Korea Air Lines, Inc.*, 1996 U.S. App. LEXIS 19798,
 15 *3-*4 (9th Cir. 1996) (DOHSA case). Even if it had, there is no evidence of a conflict in this case.
 16 To the contrary, as we explained earlier, "a personal representative has a fiduciary duty to bargain
 17 for the rights of **all** the decedent's beneficiaries and to turn over to them their appropriate share of
 18 any proceeds." *Alcabassa*, 62 F.3d at 408 (citations omitted). Plaintiff RODRIGUEZ was doing
 19 exactly that when she offered to dismiss this action and "**all claims brought or which could have**
 20 **been brought therein** against Defendants" for the full amount of the Defendants' insurance limits.
 21 ECF No. 57-1 at 4 (emphasis added). The Defendants' refusal to accept that offer unless this Court
 22 appoints a guardian *ad litem* to act on S.J.'s behalf is therefore unwarranted and unreasonable.

23 If the parties reach a settlement, Plaintiff must obtain court approval for S.J.'s allocation
 24 under Cal. Probate Code § 2505(a). As we have represented to the Court from the start, S.J. will
 25 of course be represented by a guardian *ad litem* during those approval proceedings should any
 26 conflicts develop over the allocation, ***but we must reach a settlement first***. As we have repeatedly
 27 reminded the Defendants, time is of the essence with respect to such a settlement. Given the
 28

1 amount of Defendant's available insurance, the main if not only advantage of settling the case for
 2 that sum is bringing closure before Christmas. But it has been more than two-and-one-half months
 3 since we served defense counsel with our policy-limits demand. The original deadline on that
 4 demand was October 29, 2021. *ECF 57-1* at 5. Unless the Defendants accept that demand
 5 unconditionally and withdraw their request for a guardian *ad litem* by the close of business on
 6 Tuesday, December 14, 2021, and agree to pay Plaintiff RODRIGUEZ the full amount of
 7 Admiral's indemnity limit before the close of business on Tuesday, December 28, 2021, we will
 8 ask the Court to put our Motion to Void the Release back on calendar and reschedule all the Pre-
 9 Trial Deadlines.

DEFENDANTS AND PLAINTIFFS IN LIMITATION'S POSITION

10 Defendants and Plaintiffs in Limitation (hereafter "Defendants") do not agree with
 11 Plaintiff's recitation above and note that they were only provided with a draft on the morning of
 12 December 6, 2021 (the same date on which the Case Management Statement is due).¹ By not
 13 engaging in a detailed response, Defendants do not intend to concede the accuracy of the
 14 statements or waive any right to oppose, correct and/or modify the statements made by Plaintiff.
 15 Moreover, Defendants do not view this Court's Order of December 3, 2021 [Dkt. 61] asking for a
 16 Case Management Statement as a directive or opportunity to substantively brief legal issues
 17 relating to an unrepresented minor since none of the signatories to this Case Management
 18 Statement have the authority to bind an unrepresented minor. Should the Court wish for these
 19 issues to be briefed, Defendants will comply with the Court's request.

20 Defendants note that Plaintiff has not referenced any controlling law in an admiralty case
 21 which stands for the proposition that S.J. has no claim to assert. Moreover, the incident at issue
 22 occurred in territorial waters of Hawaii. In an admiralty case, state law may apply if no well-
 23 established federal admiralty rule exists. *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S.
 24

25
 26 ¹ Defendants do not fault Plaintiff for the timing of the draft since the Court's Order requesting a
 27 Case Management Statement was only set one previous business day prior to the deadline for the
 28 statement. They only note that they have not had time to review the jurisprudence therein and
 provide a substantive response.

1 310 (1995). Moreover, state law may be applied if it supplements, but does not contravene
 2 uniformity of the admiralty rule. *Yamaha Motor Corp. v. Calhoun*, 516 U.S. 199 (1996). Plaintiff
 3 has not addressed Hawaii law in her position above. Nevertheless, assuming Plaintiff is correct as
 4 to her position that no claim which S.J. can assert on her own behalf exists under any law,
 5 Plaintiff's position that appointment of a guardian *ad litem* would upset the settlement simply
 6 makes no sense.²

7 As this Court knows, counsel for Plaintiff represented to this Court that he would appoint
 8 a guardian *ad litem* to conclude any settlement reached by the parties. Dkt. 40, 7:20-8:12.
 9 Defendants expect counsel to abide by his representations which will enable the parties to conclude
 10 the settlement on the terms which were agreed, and which are to remain confidential. Defendants
 11 intend to comply with the settlement when all conditions of that settlement have been fulfilled.
 12 Defendants do not believe that the details of the parties' settlement discussions are appropriate for
 13 inclusion in the public record. Should the Court wish to hold a settlement conference, Defendants
 14 will participate in the same.

15 Defendants' goal is to have the case fully resolved on the terms and conditions previously
 16 agreed.

17
 18 Dated: December 6, 2021

/s/ John R. Hillsman
 19 JOHN R. HILLSMAN
 20 MCGUINN, HILLSMAN & PALEFSKY
 Counsel for Plaintiff

21
 22 Dated: December 6, 2021

/s/ Pamela L. Schultz
 23 PAMELA L. SCHULTZ
 24 KENNEDYS CMK LLP
 Counsel for Defendants and Plaintiffs in
 Limitation

27 ² Defendants have reached out to a structured settlements broker who indicates that funds could
 be invested for S.J.